

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LARRY SMITH,

v.

JAMES COX, et al.,

Petitioner,

Respondents.

Case No. 3:15-cv-00034-MMD-VPC

ORDER

Larry Smith, a Nevada prisoner, has submitted a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (dkt. nos. 1-1, 1-2) and has paid the filing fee (see dkt. no. 3). The Court has reviewed the petition pursuant to Rule 4 of the Rules Governing Habeas Cases, and it shall be docketed and served upon the respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

It therefore is ordered that the Clerk shall file and electronically serve the petition (dkt. nos. 1-1, 1-2) on the respondents.

It is further ordered that respondents shall file a response to the petition, including potentially by motion to dismiss, within ninety (90) days of service of the petition, with any requests for relief by petitioner by motion otherwise being subject to

1 the normal briefing schedule under the local rules. Any response filed shall comply with
2 the remaining provisions below, which are entered pursuant to Habeas Rule 4.

3 It is further ordered that any procedural defenses raised by respondents in this
4 case shall be raised together in a single consolidated motion to dismiss. In other words,
5 the Court does not wish to address any procedural defenses raised herein either in
6 *seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.
7 Procedural defenses omitted from such motion to dismiss will be subject to potential
8 waiver. Respondents shall not file a response in this case that consolidates their
9 procedural defenses, if any, with their response on the merits, except pursuant to 28
10 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents
11 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
12 the single motion to dismiss, not in the answer; and (b) they shall specifically direct their
13 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*
14 *Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
15 including exhaustion, shall be included with the merits in an answer. All procedural
16 defenses, including exhaustion, instead must be raised by motion to dismiss.

17 It is further ordered that, in any answer filed on the merits, respondents shall
18 specifically cite to and address the applicable state court written decision and state
19 court record materials, if any, regarding each claim within the response as to that claim.

20 It is further ordered that petitioner shall have thirty (30) days from service of the
21 answer, motion to dismiss, or other response to file a reply or opposition, with any other
22 requests for relief by respondents by motion otherwise being subject to the normal
23 briefing schedule under the local rules.

24 It is further ordered that any additional state court record exhibits filed herein by
25 either petitioner or respondents shall be filed with a separate index of exhibits identifying
26 the exhibits by number. The CM/ECF attachments that are filed further shall be
27 identified by the number or numbers of the exhibits in the attachment. The hard copy of
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1 any additional state court record exhibits shall be forwarded — for this case — to the
2 staff attorneys in Reno.

3 DATED THIS 23rd day of April 2015.
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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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